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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,149	10/25/1999	RICHARD E. WARD	73618/RHS-00	2803

27498 7590 10/12/2005

PILLSBURY WINTHROP SHAW PITTMAN LLP  
P.O. BOX 10500  
MCLEAN, VA 22102

EXAMINER
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VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/427,149

Applicant(s)

WARD, RICHARD E.

Examiner

Beth Van Doren

Art Unit

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 9, 10, 14, 26-29, 40, 49, 50, 54, 70, 77, 79, 80, 82 and 94.  
Claim(s) rejected: 1, 3-8, 11-13, 15-25, 30, 32-39, 41, 43-48, 51-53, 55-69, 71-76, 78, 81 and 84-93.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**TARIQ R. HAFIZ**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

***Advisory Action***

1. The following Advisory action is in response to the after-final communications received 09/28/2005. In this after-final communications, Applicant has amended claims 5, 9, 12, 14-18, 21-22, 26, 34-36, 40, 44, 49, 52, 54, 55, 57-58, 61-62, 64, 68, 72-73, 77, 80, 82, 84, 88, 91, and 93 and added claims 95-99. Applicant has cancelled claims 1, 3, 8, 11, 32, 37-39, 41-43, 48, 51, 53, 71, 75-76, 78, 81, 86, and 90. These amendments, new claims, and cancellations will not be entered into the record because they raise new issues, such as new scope, that require further consideration.

2. First, with regards to claim 9, claim 9 was objected to as being dependent upon a rejected base claim in the previous final office action dated 6/28/05. However, that office action stated that claim 9 “would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims”. Examiner points out that new claim 9 of the after-final amendment does not include all the limitations of intervening claims 3, 4, 5, and 8. Further, the after-final amendment changes the dependency of claim 5. Therefore claim 5 is no longer even associated with new claim 9. Thus, further consideration is required with regards to the new scope of claim 9.

3. Second, Applicant has added claims 95-99 in the after-final communication. Applicant states in his remarks that claim 96 includes the allowable subject matter from claim 78.

Examiner points out that she objected to claims 9, 10, 14, 26-29, 40, 49, 50, 54, 77, 79, 80, 82, and 94 as being as dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Examiner did not indicate claim 78 allowable and in fact rejected claim 78 under 35 USC §

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102(b). Claim 96 does include features of claim 78 and claim 1 from the claim set presented 04/15/2005. However, claim 1 and claim 78 have not been indicated allowable on their face. New claim 96 further includes default attribute values, which are not found in either claim 1 or 78. Therefore, the scope of this claim has not previously been considered and therefore, the claim requires further consideration.

3. For at least these reasons, the after-final communication will not be entered.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



bvd

October 5, 2005